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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

Mark Ankorn (SBN 166871)  
Law Offices of Mark Ankorn  
525 B Street, Suite 1500  
San Diego, California 92101-4417  
(619) 858-4736

Attorney for Plaintiff Patrick McNamara

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

'10 CV 0353 H' - JMA

PATRICK MCNAMARA,  
an individual,

Case No.

Plaintiff,

COMPLAINT

v.

Cal. Civ. Code § 1788 *et seq.*  
15 U.S.C. § 1692 *et seq.*

CAPITAL ONE BANK (USA), N.A.; NCO  
FINANCIAL SYSTEMS, INC.,  
corporations,

Jury Trial Demanded

Defendants.

INTRODUCTION

1. This is an action for damages brought by an individual consumer for Defendant's violations of the Rosenthal Fair Debt Collection Practices Act, California Civil Code § 1788 *et seq.* ("Rosenthal Act") and the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA") which prohibit debt collectors from engaging in abusive, deceptive, and unfair practices, and for invasion of privacy.

2. This action seeks redress for the unlawful and deceptive practices committed by defendant and its agents and associates in connection with its efforts to collect a debt. Defendants

1 engaged in a months-long pattern of deliberate harassment, contacting plaintiff by phone and in  
2 writing **178 times** after being notified of representation by an attorney and asked to direct all future  
3 communications to counsel. Plaintiff seeks monetary relief based on Defendants' violations of  
4 federal and state law.

### 5 JURISDICTION AND VENUE

6 3. This Court has jurisdiction to hear the FDCPA violation pursuant to 15 U.S.C. §  
7 1692. Thus, federal subject matter jurisdiction is properly founded upon section 28 U.S.C. § 1331.  
8 This Court has jurisdiction over the state law claims pursuant to 28 U.S.C. § 1332, because the  
9 parties' citizenship is diverse and the amount in controversy exceeds \$75,000.00. Supplemental  
10 jurisdiction for the state law claims also arises under 28 U.S.C. § 1367.

### 11 PARTIES

12 4. Patrick McNamara ("Plaintiff") is a natural person residing in La Mesa, California.

13 5. Capital One Bank (USA), National Association ("COBNA") is a Virginia  
14 corporation engaged in the business of collecting debts in this state with its principal place of  
15 business located at 1680 Capital One Drive, McLean, Virginia.

16 6. NCO Financial Systems, Inc., ("NCO") is a Pennsylvania corporation engaged in the  
17 business of collecting debts in this state with its principal place of business located at 3850 North  
18 Causeway Boulevard, Metairie, Louisiana.

19 7. Defendants are "debt collectors" as defined by the Rosenthal Act (Civ. Code §  
20 1788.2(c)) as they engage in the collection of consumer debts in the ordinary course of its business,  
21 on behalf of themselves or others. Defendant NCO is a debt collector as defined by the FDCPA as  
22 it engages in the collection of consumer debts on behalf of others in the ordinary course of its  
23 business. Defendants use the mail and telephone in the ordinary course of business.

### 24 FACTS

25 8. For several years predating the operative facts at issue in this lawsuit, plaintiff had  
26 two credit cards with Capital One, account numbers ending 3458 and 5547. He made purchases on  
27 both cards for personal, family, and household needs and as such his debts are "consumer debts" as  
28

1 defined by the FDCPA.

2 9. On December 8, 2009, plaintiff received a telephone call from a collection agent  
3 working for NCO who identified herself as "Trina" and demanded payment on an allegedly past due  
4 Capital One credit card account. Plaintiff immediately informed her that he was recording the call  
5 and said that he had hired an attorney to assist him with his debts. "Trina" verified plaintiff's  
6 current home address, his cell phone number, and the last four digits of his Social Security Number  
7 before asking him to make a payment. She specifically stated that she may be recording the call  
8 herself and disclosed that she was attempting to collect a debt. She asked several times for plaintiff  
9 to make a payment and he responded by directing her to his attorney.

10 10. On December 14, 2009, plaintiff received a telephone call from a collection agent  
11 working for COBNA who identified himself as "Jerry" and demanded payment on an allegedly past  
12 due credit card. Plaintiff immediately informed "Jerry" that he was recording the conversation and  
13 said that he had hired an attorney to assist him with his debts. Plaintiff gave the name of his  
14 attorney and the lawyer's office phone number, and "Jerry" terminated the call before additional  
15 conversation could take place.

16 11. On December 18, 2009, plaintiff received another phone call from a collection agent  
17 working for COBNA. This agent identified himself as "John" and demanded payment on an  
18 allegedly past due credit card. Plaintiff immediately informed "John" that he was recording the call  
19 and said that he had hired an attorney to assist him with his debts. Plaintiff gave the name of his  
20 attorney and the lawyer's office phone number, and asked that COBNA speak with his attorney  
21 instead of calling him. "John" told plaintiff to have his attorney call Capital One directly, and asked  
22 when a good time to call plaintiff back would be.

23 12. COBNA had actual knowledge of its obligation under state and federal law to cease  
24 and desist from further communication with Plaintiffs with respect to the debt upon notification of  
25 representation. COBNA also knew that it could only communicate with Plaintiffs' retained counsel  
26 and knew that any further communication of any kind with Plaintiffs directly or indirectly was  
27 prohibited, unlawful, illegal, and would subject it to money damages.

28

1           13. Despite having actual knowledge of representation, Defendant COBNA nevertheless  
2 contacted plaintiff by phone 159 times in an attempt to collect money for plaintiff's consumer  
3 debts. These contacts were numerous and frequent, often at multiple times per day from different  
4 telephone numbers using different area codes.

5           14. A detailed list of these phone contacts with date, time, and originating telephone  
6 number is attached as Exhibit "A" to the complaint.

7           15. In addition to the phone calls, COBNA made at least two demands for payment in  
8 writing after receipt of this notification. For example, COBNA sent plaintiff a letter dated  
9 December 23, 2009, notifying plaintiff that the account was past due by sixty days.

10           16. A true and correct copy of the December 23, 2009, letter is attached to this complaint  
11 as Exhibit "B."

12           17. Plaintiff also received seventeen (17) phone calls from Defendant NCO after being  
13 notified of representation by an attorney.

14           18. A detailed list of these phone contacts with date, time, and originating telephone  
15 number is attached as Exhibit "C" to the complaint.

16           19. As debt collectors, defendants are fully aware of state and federal debt collection  
17 laws, including the Rosenthal Act and FDCPA.

18           20. Defendants knew their debt collection communications were governed by and  
19 subject to the restrictions set forth in state and federal law.

20           21. Defendants further knew each of the harassing communications were willful and  
21 knowing violations of both the Rosenthal Act and the FDCPA.

22           22. Defendants' harassing communications are part of an overall unlawful business  
23 pattern and practice whereby they has knowingly, willfully, and intentionally create and carry out a  
24 profitable scheme through illegal collection activity.

25           23. Defendants are rarely, if ever, sued over such harassing communications, since very  
26 few debtors are aware that their rights are being violated and very few attorneys are willing to take  
27 on such cases.

28

24. Defendants are highly motivated to continue their harassing communications since any claims paid out as a result of such wrongful conduct or minuscule when compared to the overall profits generated from such illegal acts.

25. As a direct result of defendants' joint and individual harassing communications, plaintiff has incurred actual damages consisting of mental and emotional distress, nervousness, embarrassment, loss of sleep, anxiety, humiliation, pain and suffering, and other injuries.

26. Plaintiff also suffered lost business opportunities by these constant interruptions to his workday. Despite repeated requests to cease contact during normal business hours, defendants continued to contact him during those times and prevented him from practicing his occupation and conducting his trade.

27. Plaintiff incurred additional incidental actual damages including but not limited to transportation and gasoline costs to the law firm, telephone call charges, postage, and other damages.

28. Each of defendants' harassing acts was so willful, vexatious, outrageous, oppressive, and maliciously calculated as to warrant statutory penalties and punitive damages.

**FIRST CLAIM FOR RELIEF**  
**Violation of California Civil Code section 1788.17 (Rosenthal Act)**  
 (against all defendants)

29. Plaintiff re-alleges and incorporates by reference the above paragraphs as though set forth fully herein.

30. The FDCPA provides in pertinent part: "After the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, [shall] not communicate with any person other than that attorney . . ." 15 U.S.C. § 1692b(6).

31. Defendant COBNA violated the FDCPA when it contacted and harassed plaintiff by telephone 159 times after being directly notified of attorney representation, as specified in Exhibit "A."

1           32. Defendant COBNA violated the FDCPA when it contacted and harassed plaintiff in  
2 writing by sending two separate written demands for payment, as shown by the letter attached as  
3 Exhibit "B."

4           33. Defendant NCO Financial violated the FDCPA when it contacted and harassed  
5 plaintiff by telephone 17 times after being directly notified of attorney representation, as specified  
6 in Exhibit "C."

7           34. California Civil Code, section 1788.17, requires that defendants COBNA and NCO  
8 comply with the provisions of 15 USC § 1692b(6), whether or not they are collecting debts for  
9 another or for their own account.

10           35. Each of the foregoing violations of 15 USC §§ 1692b(6) by defendants is a separate  
11 violation of California Civil Code, section 1788.17.

12           36. The foregoing acts by defendants were willful and knowing violations of the  
13 Rosenthal Act, are sole and separate violations under section 1788.30(b) of the Act, and trigger  
14 multiple statutory damages penalties.

15  
16                           **SECOND CLAIM FOR RELIEF**  
17                           **Violation of Civil Code, Section 1788.17 (Rosenthal Act)**  
                              (b) (against NCO Financial Systems, Inc.)

18           37. Plaintiff re-alleges and incorporates by reference the above paragraphs as though set  
19 forth fully herein.

20           38. The FDCPA, specifically 15 U.S.C. § 1692c(b), reads: "[A] debt collector may not  
21 communicate, in connection with the collection of any debt, with any person other than a consumer,  
22 his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney  
23 of the creditor, or the attorney of the debt collector." The only exception to this broad prohibition  
24 of third-party contact is when the collector is attempting to acquire "location information" about the  
25 consumer. 15 U.S.C. § 1692b. In this limited circumstance, a debt collector may contact other  
26 persons but may not state that the consumer owes any debt and may not communicate with any such  
27 person more than once.  
28

1           39.     On December 9, 2009, defendant NCO called plaintiff's former spouse at her place  
2 of business and asked to speak with plaintiff. NCO did so at a time when they had been previously  
3 notified of representation and had spoken with plaintiff on the phone the day before. NCO had no  
4 reason to seek plaintiff's "location information" as it already had successfully and repeatedly  
5 contacted plaintiff, had verified his contact information directly from him, and had made a direct  
6 demand for payment.

7           40.     As a result, NCO violated the FDCPA by contacting a person other than plaintiff, his  
8 attorney, or other person permitted under statute.

9           41.     This act by NCO was a willful and knowing violation of the FDCPA and the  
10 Rosenthal Act and triggers additional statutory penalties against NCO.

11  
12                               **THIRD CLAIM FOR RELIEF**

13                               **Invasion of Privacy by Intrusion Upon Seclusion**

14           42.     Plaintiff re-alleges and incorporates by reference the above paragraphs as though set  
15 forth fully herein.

16           43.     Defendants engaged in improper conduct in knowingly and intentionally pursuing  
17 plaintiff to force payment of the claimed debt.

18           44.     Plaintiff had an objectively reasonable expectation of privacy in his solitude,  
19 seclusion, and private concerns and affairs of privacy.

20           45.     Defendants intentionally intruded on plaintiff's privacy by repeated harassment from  
21 unlawful communications, specifically by making 176 telephone calls to plaintiff and by sending  
22 written demands for payment to his residence.

23           46.     These harassing phone calls over a period of months at frequent intervals and during  
24 working hours constituted sensory penetration of plaintiff's zone of seclusion.

25           47.     Defendants' intrusions and invasions against plaintiff's quiet enjoyment of his  
26 personal residence occurred in such a way that would be highly offensive to a reasonable person in  
27 the same or similar circumstances.



**FOURTH CLAIM FOR RELIEF**

**Tort In Se**

48. Plaintiff re-alleges and incorporates the above paragraphs as though set forth fully herein.

49. Defendants engaged in an unlawful course of conduct in violation of the FDCPA, Rosenthal Act, and California Civil Code, sections 43 and 1708.

50. Defendants violated a statutory duty owed to another and RE thus liable under the common law doctrine of "Tort-in-Se."

**PRAYERS FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the defendants for the following:

1. Actual economic damages according to proof;
2. Statutory penalties against defendant COBNA arising from 159 separate violations of the Rosenthal Act in an amount of \$1,000.00 per violation pursuant to California Civil Code, section 1788.30, subd. (b);
3. Statutory penalties against defendant NCO arising from 17 separate violations of the Rosenthal Act in an amount of \$1,000.00 per violation pursuant to California Civil Code, section 1788.30, subd. (b);
4. Statutory penalties against defendant NCO arising from 17 separate violations of the FDCPA in an amount of \$1,000.00 per violation pursuant to 15 U.S.C. § 1692k;
5. Punitive damages in the amount of ten times actual damages for Invasion of Privacy by Intrusion on Seclusion and Tort in se;
6. Costs of litigation and reasonable attorneys' fees pursuant to 15 U.S.C. § 1692k, California Civil Code, section 1788.30(c) and Code of Civil Procedure, section 1021.5;
7. Injunctive relief permanently restraining defendants and any successors in interest, subsidiaries, affiliates, consultants, or contractors from any further contact with plaintiff;



1           8.       Such other and further relief as the court may deem just and proper.

2  
3       DATED: February 12, 2010

LAW OFFICES OF MARK ANKCORN

4  
5  
6       By: 

Mark Ankorn

Attorney for Plaintiff Patrick McNamara

## **Exhibit A**

Pat McNamara  
Capital One Credit Card Collection Record

	<b>Date</b>	<b>Time</b>	<b>Creditor</b>	<b>Phone Number</b>
	13-Dec-09	8:31 AM	Capital One	866-381-0453
	13-Dec-09	10:32 AM	Capital One	301-654-4309
	13-Dec-09	1:17 PM	Capital One	866-381-0453
	14-Dec-09	3:01 PM	Capital One	866-381-0453
1	18-Dec-09	9:38 AM	Capital One	714-374-8035
2	18-Dec-09	1:09 PM	Capital One	714-374-8035
3	19-Dec-09	8:01 AM	Capital One	718-359-1082
4	19-Dec-09	8:05 AM	Capital One	800-955-6600
5	19-Dec-09	11:12 AM	Capital One	866-381-0453
6	19-Dec-09	2:20 PM	Capital One	866-929-5306
7	23-Dec-09	11:20 AM	Capital One	951-243-2302
8	26-Dec-09	8:23 AM	Capital One	973-208-1038
9	26-Dec-09	1:11 PM	Capital One	866-929-5306
10	28-Dec-09	9:50 AM	Capital One	757-483-4840
11	28-Dec-09	7:01 PM	Capital One	866-929-5306
12	31-Dec-09	9:15 AM	Capital One	714-429-8361
13	31-Dec-09	12:28 PM	Capital One	734-429-8361
14	01-Jan-10	11:49 AM	Capital One	304-252-0135
15	01-Jan-10	12:07 PM	Capital One	951-243-2302
16	02-Jan-10	10:34 AM	Capital One	847-488-3003
17	02-Jan-10	10:48 AM	Capital One	866-929-5307
18	02-Jan-10	1:04 PM	Capital One	404-869-1722
19	03-Jan-10	8:17 AM	Capital One	215-977-7228
20	03-Jan-10	9:07 AM	Capital One	508-209-2384
21	03-Jan-10	2:01 PM	Capital One	508-209-2384
22	03-Jan-10	3:27 PM	Capital One	866-929-5306
23	04-Jan-10	8:51 AM	Capital One	951-243-2302
24	04-Jan-10	11:02 AM	Capital One	951-243-2302
25	05-Jan-10	8:16 AM	Capital One	951-243-2302
26	05-Jan-10	9:28 AM	Capital One	951-243-2302
27	05-Jan-10	11:55 AM	Capital One	416-932-4520
28	06-Jan-10	8:31 AM	Capital One	310-208-4217

Pat McNamara  
Capital One Credit Card Collection Record

29	06-Jan-10	12:02 PM	Capital One	310-208-4217
30	06-Jan-10	12:35 PM	Capital One	486-932-4500
31	06-Jan-10	4:53 PM	Capital One	310-208-4217
32	06-Jan-10	7:06 PM	Capital One	310-208-4217
33	06-Jan-10	7:08 PM	Capital One	866-929-5307
34	07-Jan-10	8:10 AM	Capital One	305-663-5884
35	07-Jan-10	8:24 AM	Capital One	305-663-5884
36	07-Jan-10	11:41 AM	Capital One	800-955-6600
37	07-Jan-10	2:41 PM	Capital One	510-868-0523
38	07-Jan-10	3:19 PM	Capital One	866-456-0677
39	07-Jan-10	5:56 PM	Capital One	305-663-5884
40	07-Jan-10	7:25 PM	Capital One	305-663-5884
41	08-Jan-10	8:49 AM	Capital One	281-208-1093
42	08-Jan-10	9:08 AM	Capital One	281-208-1093
43	08-Jan-10	12:27 PM	Capital One	866-381-0453
44	08-Jan-10	6:12 PM	Capital One	281-208-1093
45	09-Jan-10	8:05 AM	Capital One	909-390-4781
46	09-Jan-10	8:25 AM	Capital One	909-390-4781
47	10-Jan-10	9:08 AM	Capital One	815-756-6960
48	10-Jan-10	9:32 AM	Capital One	815-756-6960
49	10-Jan-10	12:21 PM	Capital One	800-955-6600
50	10-Jan-10	3:58 PM	Capital One	800-955-6600
51	10-Jan-10	4:27 PM	Capital One	800-955-6600
52	11-Jan-10	9:08 AM	Capital One	815-756-6960
53	11-Jan-10	10:32 AM	Capital One	815-756-6960
54	11-Jan-10	12:52 PM	Capital One	866-929-5306
55	11-Jan-10	2:17 PM	Capital One	866-929-5306
56	12-Jan-10	8:11 AM	Capital One	866-929-5306
57	12-Jan-10	9:16 AM	Capital One	866-929-5306
58	12-Jan-10	9:44 AM	Capital One	866-456-0677
59	12-Jan-10	11:45 AM	Capital One	800-955-6600
60	12-Jan-10	12:45 PM	Capital One	416-932-4520
61	12-Jan-10	12:55 PM	Capital One	866-456-0677

Pat McNamara  
Capital One Credit Card Collection Record

62	12-Jan-10	1:45 PM	Capital One	503-547-8300
63	12-Jan-10	6:51 PM	Capital One	800-955-6600
64	12-Jan-10	7:29 PM	Capital One	503-547-8300
65	12-Jan-10	8:28 PM	Capital One	800-955-6600
66	13-Jan-10	8:17 AM	Capital One	815-756-6960
67	13-Jan-10	9:28 AM	Capital One	815-756-6960
68	13-Jan-10	1:13 PM	Capital One	866-381-0453
69	13-Jan-10	2:57 PM	Capital One	866-381-0453
70	18-Jan-10	9:02 AM	Capital One	815-756-6960
71	18-Jan-10	12:20 PM	Capital One	330-222-1041
72	18-Jan-10	2:04 PM	Capital One	330-222-1041
73	23-Jan-10	12:06 PM	Capital One	866-929-5307
74	23-Jan-10	12:52 PM	Capital One	866-929-5307
75	24-Jan-10	8:05 AM	Capital One	909-390-4781
76	24-Jan-10	9:13 AM	Capital One	909-390-4781
77	24-Jan-10	12:09 PM	Capital One	909-390-4781
78	24-Jan-10	3:51 PM	Capital One	800-955-6600
79	25-Jan-10	8:07 AM	Capital One	815-756-6960
80	25-Jan-10	8:47 AM	Capital One	815-756-6960
81	25-Jan-10	11:49 AM	Capital One	866-381-0453
82	25-Jan-10	5:40 PM	Capital One	305-663-5884
83	25-Jan-10	7:29 PM	Capital One	866-381-0453
84	25-Jan-10	8:13 PM	Capital One	305-663-5884
85	26-Jan-10	8:07 AM	Capital One	973-208-1038
86	26-Jan-10	11:21 AM	Capital One	301-654-4309
87	26-Jan-10	2:51 PM	Capital One	301-654-4309
88	26-Jan-10	6:57 PM	Capital One	301-654-4309
89	27-Jan-10	7:31 PM	Capital One	800-955-6600
90	30-Jan-10	11:03 AM	Capital One	631-205-0520
91	30-Jan-10	2:34 PM	Capital One	866-299-5307
92	31-Jan-10	10:44 AM	Capital One	815-756-6960
93	01-Feb-10	10:03 AM	Capital One	954-522-4917
94	01-Feb-10	3:55 PM	Capital One	800-955-6600

Pat McNamara  
Capital One Credit Card Collection Record

95	01-Feb-10	7:07 PM	Capital One	800-955-6600
96	01-Feb-10	8:24 PM	Capital One	954-522-4917
97	02-Feb-10	8:16 AM	Capital One	000-012-3456
98	02-Feb-10	8:19 AM	Capital One	732-202-1039
99	02-Feb-10	8:29 AM	Capital One	732-202-1039
100	02-Feb-10	10:54 AM	Capital One	866-929-5306
101	02-Feb-10	1:22 AM	Capital One	732-202-1039
102	02-Feb-10	1:37 PM	Capital One	732-202-1039
103	02-Feb-10	6:14 PM	Capital One	866-929-5306
104	02-Feb-10	7:31 PM	Capital One	866-929-5306
105	02-Feb-10	7:55 PM	Capital One	732-202-1039
106	03-Feb-10	9:16 AM	Capital One	562-483-7846
107	03-Feb-10	12:16 PM	Capital One	866-929-5306
108	03-Feb-10	6:59 PM	Capital One	866-381-0453
109	04-Feb-10	9:42 AM	Capital One	310-208-4217
110	04-Feb-10	1:08 PM	Capital One	310-208-4217
111	04-Feb-10	1:42 PM	Capital One	310-208-4217
112	04-Feb-10	6:05 PM	Capital One	310-208-4217
113	04-Feb-10	6:15 AM	Capital One	866-929-5307
114	04-Feb-10	6:45 PM	Capital One	866-929-5307
115	04-Feb-10	6:58 PM	Capital One	866-929-5307
116	05-Feb-10	8:24 AM	Capital One	734-429-8361
117	05-Feb-10	8:26 AM	Capital One	734-429-8361
118	05-Feb-10	5:51 PM	Capital One	734-429-8361
119	05-Feb-10	5:52 PM	Capital One	734-429-8361
120	05-Feb-10	6:55 PM	Capital One	800-955-6600
121	05-Feb-10	7:36 PM	Capital One	734-429-8361
122	05-Feb-10	8:14 PM	Capital One	800-955-6600
123	06-Feb-10	12:09 PM	Capital One	866-381-0453
124	06-Feb-10	12:32 PM	Capital One	866-381-0453
125	07-Feb-10	8:10 AM	Capital One	304-252-0135
126	07-Feb-10	8:30 AM	Capital One	304-252-0135
127	07-Feb-10	11:07 AM	Capital One	304-252-0135

Pat McNamara  
Capital One Credit Card Collection Record

128	07-Feb-10	11:33 AM	Capital One	304-252-0135
129	07-Feb-10	2:15 PM	Capital One	866-929-5307
130	07-Feb-10	2:21 PM	Capital One	866-929-5307
131	08-Feb-10	8:39 AM	Capital One	813-202-7244
132	08-Feb-10	8:59 AM	Capital One	813-202-7244
133	08-Feb-10	10:38 AM	Capital One	800-955-6600
134	08-Feb-10	1:07 PM	Capital One	813-202-7244
135	08-Feb-10	1:48 PM	Capital One	813-202-7244
136	08-Feb-10	6:39 PM	Capital One	800-955-6600
137	08-Feb-10	7:26 PM	Capital One	813-202-7244
138	09-Feb-10	8:26 AM	Capital One	281-208-1093
139	09-Feb-10	8:27 AM	Capital One	281-208-1093
140	09-Feb-10	12:46 PM	Capital One	866-929-5306
141	09-Feb-10	6:43 PM	Capital One	866-929-5306
142	09-Feb-10	7:24 PM	Capital One	866-929-5306
143	09-Feb-10	8:35 PM	Capital One	281-208-1093
144	10-Feb-10	9:50 AM	Capital One	404-869-1722
145	10-Feb-10	10:41 AM	Capital One	404-869-1722
146	10-Feb-10	2:09 PM	Capital One	866-929-5306
147	10-Feb-10	3:23 PM	Capital One	866-929-5306
148	10-Feb-10	6:36 PM	Capital One	866-929-5306
149	10-Feb-10	7:10 PM	Capital One	404-869-1722
150	10-Feb-10	7:41 AM	Capital One	866-929-5306
151	10-Feb-10	8:09 PM	Capital One	404-869-1722
152	11-Feb-10	8:28 AM	Capital One	304-252-0135
153	11-Feb-10	9:37 AM	Capital One	304-252-0135
154	11-Feb-10	11:33 AM	Capital One	866-929-5307
155	11-Feb-10	1:16 PM	Capital One	866-929-5307
156	11-Feb-10	3:03 PM	Capital One	304-252-0135
157	11-Feb-10	5:12 PM	Capital One	304-252-0135
158	11-Feb-10	7:32 PM	Capital One	304-252-0135
159	11-Feb-10	8:42 PM	Capital One	866-929-5307



## **Exhibit B**



Creditor: Capital One Bank (USA), N.A.  
 Re: Account Number: 4115072101103458  
 Balance: \$8,293.54  
 Amount Due: \$448.00

**Did something happen?  
 We're here to help.**

Dear Patrick G McNamara:

Between doing payroll, managing employees and paying vendors, it's easy for things to slip through the cracks. So in case it slipped your mind:

**You've now missed three payments on your Capital One Small Business account:** (In other words, you're 60 days past due.) So make sure you mail in the amount due to regain your charging privileges, bring your account back into good standing, and avoid further negative reporting to business credit bureaus such as Dunn & Bradstreet and The Small Business Financial Exchange\*.

**If you need help making your payment, give us a call.** Our specially trained associates have many tools available to help with your current situation. Whether it's arranging a partial payment, waiving the pay-by-phone fee or customizing a payment plan, we'll work with you to find a solution that works for your business and your bottom line.

**If you have questions please give us a call at 1-800-955-6600.** Our Customer Service Representatives are available M-F 8:00 a.m. to 11:00 p.m. EST and Sat-Sun 8:00 a.m. to 8:00 p.m. EST.

Sincerely,

Capital One Services, LLC

**P.S. Please read the enclosed insert. It has valuable information you should know about making payments on your Capital One account.**

\*For questions on your business credit report, or to obtain a copy, please contact Dunn & Bradstreet at [www.dnb.com/eupdate](http://www.dnb.com/eupdate) or The Small Business Financial Exchange at 1-800-727-8495.

**NOTICE: PLEASE SEE REVERSE SIDE FOR IMPORTANT INFORMATION.**

FM21-RL-0308  
 ABC 2415R (20080301)  
 FM18727

▼ PLEASE RETURN PORTION BELOW WITH PAYMENT ▼



0000000 1 4115072101103458 00 00000000000000000000

Total enclosed \$

- Moving? Change your address online or on the back.
- Pay online anytime - no more checks, stamps or clutter.
- Sign up at [www.capitalone.com](http://www.capitalone.com).

20689



Patrick G McNamara  
 5440 Baltimore Dr Unit 120  
 La Mesa, CA 91942-5001

Capital One  
 P.O. Box 71083  
 Charlotte, NC 28272-1083

**1. Who We Are and Who We Service.** Capital One Services, LLC is a subsidiary of Capital One, National Association, and services the following Capital One affiliated companies:

- Capital One Bank (USA), National Association;
- Capital One, National Association; and
- Capital One Auto Finance, Inc.

The name of your creditor has been previously disclosed to you and is identified for purposes of this letter by the creditor name and/or your Account number on the front. Unless another servicer is disclosed in this letter or has been separately disclosed to you as the current servicer of your Account, we are the current servicer of your Account.

**2. State and Local Disclosures** The following disclosure is required by state or local law if your Account involves a debt owed primarily for personal, family, household or other consumer purpose(s), and you receive this letter in Connecticut, the District of Columbia, Iowa, New York City, North Carolina or Vermont:

**This is an attempt to collect a (consumer) debt (claim). Any information obtained will be used for that purpose.**

The following disclosure is required by state law if your Account involves a debt owed primarily for personal, family, household or other consumer purpose(s) and you receive this letter in Iowa:

**This communication is from a debt collector.**

The following disclosure is required by state law if your Account involves a debt owed primarily for personal, family, household or other consumer purpose(s) and you receive this letter in Massachusetts:

**NOTICE OF IMPORTANT RIGHTS: YOU HAVE THE RIGHT TO MAKE A WRITTEN OR ORAL REQUEST THAT TELEPHONE CALLS REGARDING YOUR DEBT NOT BE MADE TO YOU AT YOUR PLACE OF EMPLOYMENT. ANY SUCH ORAL REQUEST WILL BE VALID FOR ONLY TEN DAYS UNLESS YOU PROVIDE WRITTEN CONFIRMATION OF THE REQUEST POSTMARKED OR DELIVERED WITHIN SEVEN DAYS OF SUCH REQUEST. YOU MAY TERMINATE THIS REQUEST BY WRITING TO THE CREDITOR.**

The terms used in this Section are defined by applicable state or local law. This is not a complete list of the rights that you might have.

**3. Bankruptcy.** If you are entitled to bankruptcy protections for your Account this letter is only for informational purposes. It is not an attempt to collect, assess or recover a debt or claim. Do not send in any payments without speaking with your bankruptcy attorney or the Bankruptcy Court. If you want to discuss your Account or your bankruptcy proceeding, please have your attorney contact us or the servicer disclosed in this letter.

**4. Electronic Check Conversion.** When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your deposit account or to process the payment as a check transaction. When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your deposit account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution. Your authorization is not limited by the date on the check.

**5. Interest and Charges Continue to Accrue.** All stated amounts are owed on the date of this letter. Because interest, late charges, and other charges might change from day to day as provided in your agreement, the amount due on the day you pay may be larger. For example, if you pay the amount stated in this letter, your Account might still have a balance after your payment is received.

**6. Time Period for Payment or Other Action.** Unless a specific date is provided, any time period for your payment or other action begins on the date of this letter.

**7. IRS Reporting of Debt Forgiveness.** If we cancel or forgive \$600 or more of principal on a debt you owe, we must provide a 1099-C tax form to you and the IRS. Please consult your tax advisor and the instructions accompanying your tax forms for more information.

**8. Credit Reporting of Your Settled Account.** If your Account is settled before it is charged off, the remainder of your Account balance will be charged off. We will then report your Account to credit reporting agencies as settled with an outstanding balance.

## Changing Address?

Address: .....

Home Phone: .....

Alternate Phone: .....

E-mail Address: .....

Please print address or phone number changes above using blue or black ink.

## Not quite ready to make payments online?

No problem. Follow these simple steps to make sure we process your payments smoothly:

- Don't staple or paper clip your check to the payment slip.
- Be sure to use the payment envelope that came with your letter. *Using a different envelope could delay processing.*
- Please don't include any additional correspondence.
- Last but not least, be sure to write your 16-digit account number on your check.

## **Exhibit C**

Pat McNamara  
NCO Financial Collection Record

	<b>Date</b>	<b>Time</b>	<b>Creditor</b>	<b>Phone Number</b>
	08-Dec-09	4:07 PM	NCO for Cap One	410-202-0069
1	08-Dec-09	5:57 PM	NCO for Cap One	800-254-2919
2	09-Dec-09	11:11 AM	NCO for Cap One	410-202-0069
3	13-Dec-09	8:36 AM	NCO for Cap One	410-202-0069
4	13-Dec-09	3:32 PM	NCO for Cap One	410-202-0069
5	20-Dec-09	10:20 AM	NCO for Cap One	410-202-0069
6	07-Jan-10	4:11 PM	NCO for Cap One	416-932-4520
7	14-Jan-10	1:59 PM	NCO for Cap One	416-932-4520
8	22-Jan-10	12:58 PM	NCO for Cap One	416-932-4520
9	25-Jan-10	12:00 PM	NCO for Cap One	486-932-4500
10	29-Jan-10	1:29 PM	NCO for Cap One	866-576-1447
11	29-Jan-10	1:31 PM	NCO for Cap One	866-576-1447
12	29-Jan-10	1:44 PM	NCO for Cap One	866-576-1447
13	29-Jan-10	1:45 PM	NCO for Cap One	866-576-1447
14	30-Jan-10	8:05 AM	NCO for Cap One	866-576-1447
15	30-Jan-10	8:06 AM	NCO for Cap One	866-576-1447
16	30-Jan-10	9:13 AM	NCO for Cap One	888-217-9861
17	31-Jan-10	2:05 PM	NCO for Cap One	800-350-2457

JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Patrick McNamara

(b) County of Residence of First Listed Plaintiff San Diego, CA  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Law Offices of Mark Ankorn, 525 B Street, Suite 1500  
San Diego, California 92101-4417 (619) 858-4736

## DEFENDANTS

Capital One Bank (USA), N.A.; NCB Financial Systems, Inc.,  
corporations

County of Residence of First Listed Defendant ORINIA  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED. DEPUTY

Attorneys (If Known)

'10 CV 0353 H JMA

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ 1 ☐ 1 Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☒ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):  
15 USC § 1692 et seq; 28 USC § 1332

Brief description of cause:  
fair debt collection practices; related tort claims

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 195,000.00

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

02/12/2010

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

10184

AMOUNT

\$350-

APPLYING IFP

JUDGE

MAG. JUDGE

PB 02-12-10

CL

Court Name: USDC California Southern  
Division: 3  
Receipt Number: CAS010184  
Cashier ID: mbain  
Transaction Date: 02/12/2010  
Payer Name: AMERICAN MESSENGER SERVICE

-----  
CIVIL FILING FEE

For: AMERICAN MESSENGER SERVICE  
Case/Party: D-CAS-3-10-CV-000353-001  
Amount: \$350.00

PAPER COPIES

For: AMERICAN MESSENGER SERVICE  
Amount: \$3.50

-----  
CHECK

Check/Money Order Num: 4534  
Amt Tendered: \$353.50

-----  
Total Due: \$353.50  
Total Tendered: \$353.50  
Change Amt: \$0.00

There will be a fee of \$45.00  
charged for any returned check.